

### REMARKS

Applicants respectfully request reconsideration of this application, and reconsideration of the Office Action dated May 14, 2004. Upon entry of this Amendment, claims 1-3, 5-8 and 15-19 remain pending with claims 1, 2, 18 and 19 currently withdrawn from consideration. New claims 20 and 21 are added while claims 4 and 9-14 have been canceled. The amendments to the claims are supported by the specification and original claims. For example, the changes to claim 3 are supported by at least paragraphs [0028] to [0035] of the specification. No new matter is incorporated by this Amendment.

As an initial matter, Applicants point out that the Examiner has not cited any art having an effective date between the date of foreign filing and the date of filing in the U.S. of the present application. The M.P.E.P. states:

**The only times during *ex parte* prosecution that the examiner considers the merits of an applicant's claim of priority is when a reference is found with an effective date between the date of the foreign filing and the date of filing in the United States and when an interference situation is under consideration. MPEP 201.15.**

Should the Examiner find intervening art necessitating the submission of a translation of the certified priority document, Applicants will gladly provide one at that time.

Meanwhile, Applicants respectfully submit that the present application is entitled to the filing date of the priority document from which the present application claims priority.

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The Title was objected to. In response, Applicants have amended the Title as suggested by the Examiner.

The specification was also objected to for purportedly being confusing in referring to "EP: 00110021.3." In response, Applicants have updated the specification to recite EP 1 156 115 A which corresponds to EP Appln. No. 00110021.3.

Hence, both objections are overcome and withdrawal of each are respectfully requested.

\* \* \*

Claims 11 and 4 were objected to. However, both claims have been canceled thereby rendering both objections moot.

\* \* \*

Claims 9-12, 15, and 16 were rejected under 35 U.S.C. § 112, second paragraph as purportedly indefinite. Claims 9-12 have been cancelled by this Amendment. Moreover, with respect to claims 15 and 16, Applicants make the following remarks.

Applicants have removed the gene names from both claims and the word “simultaneous” from claim 15. In both claims, the word “coding for” has been replaced with the word “encoding.” Moreover, the claims have been amended to clarify that each gene is from *Corynebacterium glutamicum*. However, with respect to the “zwa1 protein” and “zwa2 protein”, Applicants note that the terminology zwa1 protein and zwa2 protein would be readily understood by those of ordinary skill in the art. The claims recite that both genes are from *Corynebacterium glutamicum*. In addition, the specification lists a least one document to which those of ordinary skill in the art may refer which describes the genes. Hence, those of ordinary skill in the art would readily understand what is intended by the terminology “zwa1 protein” and “zwa2 protein.”

In view of the above remarks, Applicants respectfully submit that the rejection is overcome. Hence, reconsideration and withdrawal of the rejection are respectfully requested.

\* \* \*

Claims 15 and 16 were rejected under 35 U.S.C. § 112, first paragraph as containing subject matter that is purportedly not adequately described by the specification. Specifically, the Office Action asserts that the specification does not adequately describe a

gene coding for lysine export, a zwa1 protein gene, or a zwa2 protein gene. Applicants respectfully traverse this rejection.

As mentioned above, claims 15 and 16 have been amended to recite that each gene is from *Coryneform glutamicum*. The specification lists a least one document to which those of ordinary skill in the art may refer which describes the zwa1 and zwa2 genes. Moreover, claim 15 has been amended to recite “*Coryneform glutamicum* gene that encodes a protein that exports lysine” which is also adequately described by the specification. Hence, the rejection is overcome and its withdrawal is respectfully requested.

\* \* \*

Claims 3-17 were rejected under 35 U.S.C. § 112, first paragraph as purportedly not being commensurate in scope with the claimed invention. The Office Action asserts that the specification does not enable the full scope of the claimed method. Applicants respectfully traverse.

In response, claim 3 has been amended to recite that the “fermenting the *coryneform* bacteria, in which at least the *Corynebacterium glutamicum* gene encoding 1-phosphofructokinase is eliminated ... .” The claims as amended are fully enabled by the specification. Hence, this rejection is overcome and withdrawal of the rejection is respectfully requested.

\* \* \*

Claim 15 was rejected under 35 U.S.C. § 112, first paragraph as purportedly not being commensurate in scope with the claimed invention. However, the Office Action concedes that the specification enables enhancing genes by their overexpression. Since, claim 15 has been amended to recite that the genes are overexpressed, the rejection is overcome and its withdrawal is respectfully requested.

\* \* \*

Claim 14 was rejected under 35 U.S.C. § 112, first paragraph as purportedly not being enabled. However, claim 14 has been cancelled thereby rendering this rejection moot.

\* \* \*

Claims 3, 4, 8-10, 13, and 17 were rejected under 35 U.S.C. § 102(e) as purportedly anticipated by Hanke et al. (U.S. Pat. No. 6, 465,238).

In addition, claims 5-7, 11, 12, 15, and 16 were rejected under 35 U.S.C. § 103(a) as purportedly obvious based on Hanke et al.

These two rejections are addressed together as similar issues apply to both. Moreover, Applicants traverse both rejections.

Applicants have amended the claims by removing reference to 6-phosphofructokinase. Moreover, the Office Action, at paragraph 23 on page 13, concedes that Hanke neither teaches nor fairly describes the 1-phosphofructokinase. Hence, both rejections are overcome and withdrawal of each is respectfully requested.

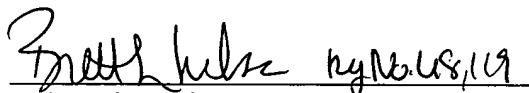
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Applicants respectfully submit that this Amendment and the above remarks obviate the outstanding objections and rejections in this case, thereby placing the application in condition for immediate allowance. Allowance of this application is earnestly solicited.

If any fees under 37 C.F.R. §§ 1.16 or 1.17 are due in connection with this filing, please charge the fees to Deposit Account No. 02-4300; Order No. 032301.269

If an extension of time under 37 C.F.R. § 1.136 is necessary that is not accounted for in the papers filed herewith, such an extension is requested. The extension fee should be charged to Deposit Account No. 02-4300; Order No. 032301.269.

Respectfully submitted,  
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